THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11859 OF 2007

DATED: 12-06-2007

Between :

M/s. Sri Raghavendra Agencies, rep. By its Proprietor M. Amarnath Goud … Petitioner

And

1. Punjab National Bank, rep. By its Chief Manager, Zonal Office, Hyderabad, Special Asset Management Department, 6-1-73, Saeed Plaza, Lakdikapool, Hyderabad., And another. .. Respondents

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ORDER :

The petitioner had availed financial assistance from the 2nd respondent Bank by creating equitable mortgage on the property bearing House No.13-4-552 to 556 situated at Karwan, Hyderabad. It is not in dispute that the petitioner committed default in payment of loan installments and consequently the respondents having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') issued a Demand Notice dated 16-8-2006 under Section 13 (2) of the Act calling upon the petitioner to repay a sum of Rs.18,41,295-80 ps outstanding in the loan account within 60 days. Since the petitioner failed to respond, the possession of the secured assets including the immovable property mortgaged and the stock-in-trade was taken on 13-3-2007 under Section 13 (4) of the Act. Thereafter, the petitioner made a representation dated 9-5-2007 requesting the respondents to grant six months time to discharge the liability in full and in the meanwhile not to take any coercive steps. The 1st respondent gave a reply dated 10-5-2007 informing the petitioner that his request cannot be considered and advised the petitioner to pay the entire dues immediately failing which they would be constrained to take further action under the provisions of the Act. Aggrieved by the said action of the respondents, this writ petition is filed.

I have heard the learned Counsel for the petitioner and perused the material on record.

The learned Counsel for the petitioner while submitting that no prejudice would be caused to the respondents by granting further time as requested by the petitioner for clearing the loan account, vehemently contended that under sub-section (3A) of Section 13 of the Act the respondents are bound to communicate the reasons for non-acceptance of the representation made by the borrower. It is

contended that since the respondents failed to assign any reasons while rejecting the request of the petitioner for extension of time, the impugned action of the respondents being contrary to the provisions of the Act is arbitrary and illegal.

At the outset, it is to be noted that sub-section (3A) of Section 13 of the Act entitles the borrower to make a representation raising the objections, if any, on receipt of demand notice under Section 13 (2) of the Act. If any such objections are raised, the secured creditor is bound to communicate within one week on receipt of such representation/objections from the borrower the reasons for non-acceptance of the same.

In the case on hand, admittedly demand notice under Section 13 (2) of the Act was issued long back on 16-8-2006 and the petitioner never raised any objections either disputing his liability or seeking time for repayment. Consequently, the possession notice dated 13-3-2007 under Section 13 (4) of the Act was issued. The representation dated 9-5-2007 made by the petitioner at that stage seeking six months time for repayment of the entire loan amount cannot be treated as a representation/objection within the meaning of sub-section (3A) of Section 13 of the Act. Hence, the impugned action of the respondents cannot be held to be either arbitrary or illegal on the ground of absence of reasons for non-acceptance of the request of the petitioner for grant of time.

At any rate, once the secured creditor has taken recourse to the measures provided under sub-section (4) of Section 13 of the Act for recovery of the secured debt, in case the petitioner is aggrieved an efficacious alternative remedy is provided under Section 17 of the Act by making an application to the Debts Recovery Tribunal having jurisdiction, in which event, after conducting due enquiry appropriate orders would be passed in accordance with law.

As expressed above, since the action of the respondents in rejecting the request of the petitioner for extension of time for

repayment of the entire loan amount cannot be held to be in contravention of the provisions of the Act, no Writ of Mandamus as prayed for can be issued.

Accordingly, the Writ Petition is dismissed. However, this shall not preclude the petitioner to work out the alternative remedy under Section 17 of the Act if so advised. No costs.

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G. ROHINI, J.

Dt. 12–06-2007

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Note:- CC in 3 days.